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NO. 82-1874

In the Supreme Court of the United States

OCTOBER TERM, 1983

DAVID W. DEAKYNE, PETITIONER

v.

DEPARTMENT OF THE ARMY CORPS OF ENGINEERS
OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

REPLY BRIEF TO MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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The facts have been previously recited.

Respondent endeavors to distort the issues. Respondent erroneously contends that the Petitioner's case is based on the fact that the Third Circuit Court of Appeals misconstrued the Act of 1924. That premise is erroneous because Petitioner's contention is not that the Lower Court misconstrued the Act of March 15, 1924, but that the Third

Circuit Court of Appeals made no effort at all to interpret the Act of March 15, 1924.

Further, the Third Circuit Court of Appeals failed to follow the prescribed rules in construing a statute. Therefore, Respondent's argument that an error in interpretation of the statute does not constitute a violation of due process is not in point nor is the case of Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 96 A. Sup. Ct. Rep. 1938, relevant to the issue raised.

In the Train case, suit was brought to control discharges of radioactive materials into navigable waters. The Court was called upon to interpret the word "pollutant" which was used in the statute and the Court referred to the legislative history to interpret that word.

The legislative history, which was very extensive, disclosed that pollutants were not to include source, by-products and special nuclear materials, which were the things Plaintiff wanted controlled. However, in the case at hand, the Court made no effort to interpret any of the words of the Act, nor did it use the Secretary of War's letter to construe any one of the words of the Act.

There was no effort to use the letter of the Secretary of War to Senator Wadsworth to interpret any of the words of the Act since the letter of the

Secretary of War made no effort to do so. Although the Secretary of War's letter was subject to several interpretations, the Court below based its findings solely on this letter as legislative history and thus, deprived Petitioner of his constitutional right.

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